

### **Remarks**

After amendment, claims 21-46 are pending in the present application, original claims 1-20 having been cancelled *without prejudice* in order to pursue subject matter the Examiner has indicated is allowable.

Note that Examiner on page 2 of the December 16, 2005 office action indicated the allowability of the subject matter of claims 5-6 and 8-11, the allowable substance of which has now been incorporated in claims 21-46 which are presented in this response. Claims 21-46 are now directed to novel vinyl ether lipid compounds as claimed, claims 21-38 being directed to vinyl ether lipid compounds, claims 39-44 being directed to lipid vesicles, claim 45 being directed to a method of delivering a therapeutic or diagnostic agent and claim 46 being directed to a pharmaceutical composition as claimed. Support for the amendment to the claims can be found throughout the originally filed application and claims, and the instant claims are based upon the allowable subject matter of the originally filed claims. No new matter has been added by way of the present amendment.

The Examiner rejected a number of originally filed claims as being anticipated by Thompson, U.S. patent number 5,277,913 ("Thompson"), for the reasons which are stated in the December 16 office action. For the reasons which are set forth below, including the fact that the allowable subject matter from original claims 5-6 and 8-11 have now been incorporated into new claims 21-46 to distinguish over Thompson, Applicants respectfully submit that the application is now in condition for allowance.

### **The §102(b) Rejection**

The Examiner has rejected originally filed claims 1-15 and 22-24 under 35 U.S.C. §102(b) as being anticipated by Thompson for the reasons which are set forth in the office action on page 2. The Examiner indicated that the subject matter of originally filed claims 5-6 and 8-11

was allowable. In response to the office action and to expedite allowance of the present application, Applicants have presented new claims which are based upon the allowable subject matter of originally filed claims 5-6 and 8-11. In each of the claims newly presented in this amendment/response, it is respectfully submitted that Applicants have avoided any teachings of Thompson.

As indicated by the Examiner, Thompson teaches an amphiphilic phospholipid compound in which the vinyl is attached to a hydrophilic group and liposomes containing the disclosed lipid. The phospholipid compound of Thompson is taught in column3, lines 15-18 and is a glyceride based phospholipids having a hydrocarbon vinyl ether group attached to the hydroxyl of the first position of the glycerol moiety, another hydrocarbon attached to the hydroxyl of the second position of the glycerol moiety, and a phosphoryl ester attached to the third hydroxyl position of the glycerol moiety. As such, the present claims do not have limitations which read on the compounds of Thompson. Nor is there any suggestion in Thompson which would motivate the present compounds, lipid vesicles based upon same or pharmaceutical compositions or methods based upon the present compounds. Consequently, for the above reasons and for the reasons which have been set forth in the office action related to the allowability of subject matter incorporated into the present claims, it is respectfully submitted that the instant application is patentable.

For the above reasons, Applicant respectfully asserts that the claims set forth in the present amendment are now in compliance with 35 U.S.C. Applicants respectfully submit that the present application is now in condition for allowance and such action is earnestly solicited.

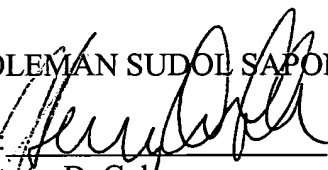
Applicant has cancelled twenty claims and added twenty-four basic claims (3 independent claims, 4 multiple dependent claims, and 13 additional dependent claims from the multiple dependent. A fee in the amount of \$605.00 is therefore due for the presentation of this amendment (17 extra dependent claims and multiple dependent claim fee). A petition for a one

month extension of time is enclosed as is the fee of \$60.00. A check in the amount of \$665.00 accompanies this response. Please debit or credit deposit account 04-0838 for any fee which is due or any overpayment which has been made. Small entity status continues to apply to the present application.

The Examiner is cordially requested to telephone the undersigned attorney should the Examiner believe that such a call would expedite the prosecution of this application.

Respectfully submitted,

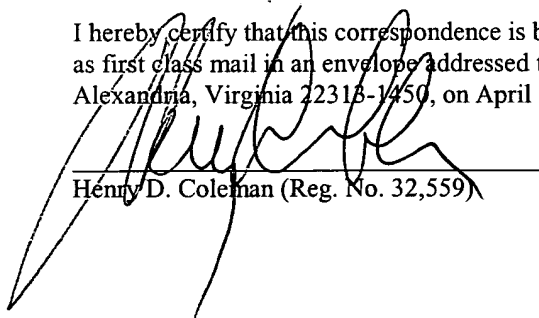
COLEMAN SUDOL SAPONE, P.C.

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Dated: April 14, 2005

**Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Drop Amendment Commissioner for Patents, Box 1450, Alexandria, Virginia 22313-1450, on April 14, 2005.

  
Henry D. Coleman (Reg. No. 32,559)